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MCDA

Minneapolis Community Development Agency

Request for City Council Committee Action

Date: July 15, 2002

To: Council Member Goodman, Community Development Committee

Refer to: MCDA Board of Commissioners

Prepared by: Jerry LePage, Phone 673-5240

Approved by: Chuck Lutz, Interim MCDA Executive Director _____________

Subject: Final Approval of Up to $3,640,000 in Tax Exempt Multi-family Housing Development Bonds for the Bottineau Lofts Project; Approval of Redevelopment Contract Business Terms for Bottineau Lofts and Bottineau Commons East Townhomes Projects and Issuance of a Pay-Go TIF Note

Previous Directives: On October 27, 2000, the MCDA Board authorized staff to proceed with the analysis of the Bottineau housing projects and to negotiate a development contract with the developer. On August 24, 2001, the City Council and the MCDA approved the Bottineau Redevelopment Plan and the Bottineau Tax Increment Financing Plan and granted preliminary approval for $9,750,000 in housing revenue bonds for Bottineau Commons East. On September 28, 2001, the City Council granted final approval of the housing revenue bonds for the Bottineau Commons East project, and the Board approved the redevelopment contract terms. On May 3, 2002, the City Council granted preliminary approval for $3,640,000 in housing revenue bonds for the Bottineau Lofts project.

Ward: Third Ward

Neighborhood Group Notification: The Bottineau Neighborhood Organization supports the Bottineau housing project and has been notified in writing of the application for housing revenue bonds.

Consistency with *Building a City That Works:* Addresses Goal 2: Ensure that an array of housing choices exist to meet the needs of our current residents and attract new residents to the City.

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Comprehensive Plan Compliance: Policy 35: Within the constraints imposed by state and federal regulations, the City should continue to sell tax-exempt revenue bonds to provide below market rate and housing development financing.

Zoning Code Compliance: It complies.

Impact on MCDA Budget: (Check those that apply)
___ No financial impact
___ Action provides increased revenue for appropriation increase
___ Action requires use of contingency or reserves
_X_ Other financial impact: Annual bond fees will be collected when the bonds are issued.

Living Wage / Business Subsidy: NA

Job Linkage: NA

Affirmative Action Compliance: Will comply.

City Council Recommendation: The Interim Executive Director recommends that the City Council:

1. Adopt the attached City Council Resolution granting final approval of up to $3,640,000 in tax-exempt Multifamily Housing Development Bonds for the Bottineau Lofts Housing project. Summary publication of the Resolution is also recommended.

MCDA Recommendations: The Interim Executive Director recommends that the Board:

1. Approve the proposed redevelopment contract business terms with the developer for the Bottineau Lofts and Bottineau Commons East Townhomes projects as contained in this report;
2. Approve the attached MCDA Resolution authorizing the Agency's issuance of a Limited Revenue, Pay-As-You-Go Tax Increment Financing Note in a principal amount not to exceed $503,000; and
3. Authorize the Interim Executive Director or his designee to execute the redevelopment contract and related documents on behalf of the Agency with Sherman Associates, Inc., or an affiliated entity created for this project, based on the terms contained in this report.

Background

The Bottineau redevelopment project is expected to have a total of 184 housing units and will consist of three phases. The first phase is the 119-unit Bottineau Commons East rental project on the eastern two-thirds of the former Jubilee Foods block that is currently under construction. The second phase consists of the 37-unit Bottineau Lofts rental project at 1929 2nd Street NE and the 13-unit Bottineau Commons East Townhomes ownership project on the western one-third of the Jubilee Foods block. The third phase is the Bottineau Commons West project and consists of 15 ownership townhomes near 18th Avenue and 3rd Street NE. A site map that shows these development components is attached as Exhibit 1.

Bottineau Lofts

The Bottineau Lofts involves the rehab of the former East Side Neighborhood Services (ESNS) building and the construction of 4 rental townhomes on the adjoining parking lot. The ESNS building was built in 1919 and has met the criteria for designation on the National Register of Historic Places based on its architecture and its social history, which triggers eligibility for historic tax credits. In 2001, ESNS vacated this building and moved its operations to a new facility that was constructed a couple of blocks away. The total development cost for Bottineau Lofts (both rehab and new construction) will be approximately $8 million.

Sherman Associates proposes to restore the exterior of the former Eastside Neighborhood Services building to match its original façade, to gut the interior of the building (except for historically significant elements), and to convert the building into 33 rental units. Rehab plans call for a new hot water heat system and air conditioning, preservation of the high ceilings, hardwood baseboard and trim, and hard wood floors in the old gym area. The Bottineau Lofts proposal also includes the construction of 4 rental townhomes in the area of the current parking lot (see attached Exhibit 2, Bottineau Lofts Townhomes). The design of these new rental townhomes will be complimentary but not identical to the appearance of the historic building, consistent with National Park Service rules. There will be 48 surface parking spaces for the housing units in the ESNS building and 8 spaces for the townhomes in tuck-under garages.

On May 3, 2002, Sherman Associates received preliminary approval from the City for $3,640,000 in tax-exempt housing revenue bonds, which also triggers eligibility for 4% low income housing tax credits (LIHTC). The developer recently received approval from the Minnesota Housing Finance Agency for $1,925,000 million for Bottineau Lofts under the Minnesota Affordable Rental Investment Fund (MARIF) program. The Metropolitan Council also recently approved a contamination cleanup application for $70,000 for Bottineau Lofts for lead paint/asbestos abatement.

In terms of affordability, the Bottineau Lofts project is in a non-impacted area and will include a substantial affordable element, due to the infusion of MARIF funds, with 11 of the 37 units affordable at 30% of median and 18 units affordable at 60% of median. The remaining 8 units will be market rate. The project will also have predominantly 2 and 3 bedroom units.

Bottineau Commons East Townhomes

The Bottineau Commons East Townhomes project involves the construction of 13 ownership units on the remaining one-third of the Jubilee block (see attached Exhibit 3, Bottineau Commons East Townhomes). The sales prices will range from $175,000 to $220,000. The total development cost for Bottineau Commons East Townhomes will be approximately $2.9 million.

Since the Bottineau redevelopment project received preliminary approval prior to the extension of the Affordable Housing Policy to ownership projects, the developer is not required to provide any affordable townhomes. However, the developer recently received MHFA affordable housing funds for the Bottineau ownership units and will use some of these to make 6 of the 13 units affordable at 80% of median and 7 units affordable at 115% of median. The MCDA will be discussing with MHFA and the developer possible ways to structure this MHFA assistance to encourage the long-term affordability of these units.

Financial Overview

Staff has reviewed the developer's proformas and has analyzed the appropriate level of TIF assistance for the project. The Bottineau Lofts has a financing gap of $503,000, which represents the difference between the first mortgage amount that is needed for the project ($2,990,000) and the amount that can be supported by project revenues ($2,487,000). The Bottineau Commons East Townhomes project does not have a gap, but the tax increment that it generates will be used to help fill the gap in the Bottineau Lofts. The TIF assistance will be provided in the form of a pay-as-you-go note for $503,000, with the housing revenue bonds as the upfront source. This present value amount assumes an annual increment of approximately $25,000 for Bottineau Lofts and $27,000 for the Bottineau Commons East Townhomes, at an interest rate of 6% over 18 years of TI collection. This tax increment generated will be available to reimburse the developer for the negotiated amount of TIF eligible public expenditures for the Bottineau Lofts project (i.e. acquisition, site preparation, environmental remediation, and public improvements). The sources and uses statements for Bottineau Lofts and the Bottineau Commons East Townhomes are shown below.

Bottineau Lofts (rental)

Sources:		Uses:	
HRB proceeds (Series A)	$ 2,990,000	Land assembly cost	$ 1,010,000
HRB proceeds (Series B)	650,000	New construction (4 townhomes)	447,000
LIHTC syndication	1,295,000	Rehab cost	3,991,900
Historic tax credit syndication	803,000	Finance costs & fees	1,225,475
State MARIF funds	1,925,000	Architect/engineering	305,000
Met Council Grant	70,000	Legal	91,500
Other equity	206,255	Developer fee	650,000
		Other soft costs	218,380
Totals	$ 7,939,255		$ 7,939,255

Bottineau Commons East Townhomes (ownership)

Sources:		Uses:	
Sales proceeds	$ 2,594,823	Demolition/site clearance	155,295
MHFA affordability funds	292,500	Construction cost	2,149,039
		Architect/engineering	142,000
		Legal	15,000
		Finance costs & fees	30,000
		Developer fee	164,000
		Marketing & sales costs	148,989
		Survey & soil tests	70,000
		Other soft costs	13,000
Totals	$ 2,887,323		$ 2,887,323

Housing Revenue Bond Information

Sherman Associates has submitted an application to the City for tax-exempt housing revenue bonds for its first mortgage financing from the MCDA's 2002 Entitlement, and also plans to utilize the automatic 4% low income housing tax credits. This request was approved on a preliminary basis by the City Council on May 3, 2002, and is now being presented for final approval. The bonds will be in a total aggregate amount not to exceed $3,640,000 that will be structured in two series. The Series A bonds will be in the amount of $2,990,000 and will be a rated bond at 6% interest that will be collateralized by a HUD/FHA insured 40-year mortgage. The Series A bonds will be AAA rated and underwritten by Piper Jaffray. The Series B bonds will be in amount the of $650,000, which represents funds invested in the project that will be repaid with equity contributions once the project is complete. The unit composition and rent levels for the Bottineau Lofts are shown below.

Unit Type	# Units	Sq. Ft.	Gross Rents
Efficiencies	2	515	$ 690
One Bedroom	7	700-844	$ 845-875
Two Bedroom (affordable)	11	800	$ 413
Two Bedroom	6	850-986	$1,017-1,037
Three Bedroom	11	1,000-1,165	$1,196-1,899
Total units	37		

Status of 2002 HRB Entitlement

2002 MCDA Entitlement Authority	$33,190,000
Many Rivers East	4,150,000
Stone Arch Apartments	3,600,000
Bottineau Lofts	3,640,000
Amount Remaining	$21,800,000

Underwriter	Bond Counsel	Council Member Informed
U.S. Bancorp Piper Jaffray	Best & Flanagan	Yes, Ward 3.

Proposed Redevelopment Contract Terms

The following is a summary of the business terms for the Bottineau Lofts and the Bottineau Commons East Townhomes projects that will be in the contract executed with Sherman Associates, Inc., or an affiliated entity created for these projects:

- The developer will develop the Bottineau Lofts rental project consisting of the rehabilitation of the former ESNS building and its conversion into 33 apartment units and the construction of 4 new rental townhomes on the same site.
- The developer will meet and exceed the minimum affordable housing requirement for the Bottineau Lofts project by providing 30% of its units (11) at 30% of median. In addition, it intends to provide 48% of its units (18) at 60% of median.
- The developer will develop the Bottineau Commons East Townhomes project, consisting of the construction of 13 ownership units with projected sales prices ranging from approximately $175,000 to $220,000.
- The TIF generated by the Bottineau Lofts and the Bottineau Commons East Townhomes will fill the gap in the Bottineau Lofts rental project.
- The developer will negotiate affordability requirements for the Bottineau Commons East Townhomes project with MHFA but expects to make 6 of the 13 units in the Bottineau Commons East Townhomes project affordable at 80% of median and 7 units affordable at 115% of median by using funds recently approved by MHFA.
- The MCDA will provide pay-as-you-go TIF assistance of in a principal amount not to exceed $503,000 for the Bottineau Lofts. This present value amount is based on an annual increment from the Lofts and the Bottineau Commons East ownership townhomes of $52,000 at a rate of 6% over 18 years of collection.
- The MCDA will disburse $70,000 in Metropolitan Council funds that have been awarded for this project to the developer for eligible costs related to the asbestos and lead paint cleanup in the former ESNS building.
- There will be a recapture formula in the redevelopment contract that will provide a 50-50 sharing with the MCDA of the profits on the ownership townhomes in excess of a 17% fee (% of total development cost), which represents a combined developer/general contractor fee since the general contracting will be done by an entity related to Sherman Associates. The developer will also be allowed a buyer satisfaction escrow account equal to 1% of total sales proceeds.

Development Finance Committee Report

On June 6, 2002, this project was reviewed by the MCDA Development Finance Committee and its comments are attached as Exhibit 4. At that time, the approximate amount of the TIF assistance was $488,500, but this has increased slightly to $503,000 due to some adjustments in the developer's financing.

Project Timetable

Assuming approval of these actions by the full Council and Board on July 26, 2002, the developer hopes to close on the financing for Bottineau Lofts and Bottineau Commons East Townhomes projects in August and start the rehabilitation and construction sometime this Fall.

Minneapolis Community Development Agency

Authorizing the issuance of bonds, in a principal amount not to exceed $3,640,000, with approximately $2,990,000 in the form of Multifamily Housing Revenue Bonds (GNMA Collateralized Mortgage Loan – Bottineau Lofts Project), Series 2002, and approximately $650,000 in the form of a Multifamily Housing Revenue Note (Bottineau Lofts Project), Subordinate Series 2002, and approving and authorizing the execution of various documents in connection therewith.

WHEREAS, pursuant to the Minnesota Municipal Housing Act, Minnesota Statutes, Chapter 462C, as amended (the "Act"), a city is authorized to carry out programs for the financing of multifamily housing for persons of low and moderate income, and to authorize its housing and redevelopment authority to act on its behalf; and

WHEREAS, the City Council (the "City Council") of the City of Minneapolis (the "City") has prepared the Housing Plan for Local Housing for the City of Minneapolis, Minnesota, revised June, 1984 (the "Plan") which plan was adopted pursuant to the Act on July 13, 1984; and

WHEREAS, the Act requires adoption of a housing finance program after a public hearing held thereon for which notice was published in a newspaper of general circulation in the City at least fifteen (15) days in advance of the hearing; and

WHEREAS, there has been proposed a program (the "Program") for the issuance of bonds to finance the acquisition and construction by Bottineau Lofts Limited Partnership, a Minnesota limited partnership (the "Developer"), of a 37-unit multifamily rental housing development to be located at 1929 2nd Street NE, in the City (the "Project"); and

WHEREAS, the City on April 22, 2002 did conduct a public hearing on the Program; and

WHEREAS, by Resolution 2002R-145 adopted May 3, 2002, and published on May 11, 2002, the City gave its preliminary approval to the issuance of the bonds to finance the Program; and

WHEREAS, the City desires to facilitate the development of rental housing within the community, encourage the preservation of affordable housing opportunities for residents of the City, encourage the preservation of housing facilities designed for occupancy by persons of low or moderate income within the boundaries of the City, and the maintenance of affordable units in the Project would assist the City in achieving these objectives; and

WHEREAS, the Program will result in the provision of decent, safe and sanitary rental housing opportunities to persons within the community; and

WHEREAS, this City Council has been advised that conventional, commercial financing to pay the capital costs of the Program is available only on a limited basis and at such high costs of borrowing that the economic feasibility of operating the Project would be significantly reduced, but the City Council has been further advised that with the aid of municipal financing and resulting low borrowing costs, the Project is economically more feasible; and

WHEREAS, the staff of the City considers the proposed Program to be in furtherance of the housing policies of the State of Minnesota as stated in the Act and of the City as stated in the Plan; and

WHEREAS, the program is to be financed from the proceeds of bonds, in an aggregate amount not to exceed $3,640,000, with approximately $2,990,000 being in the form of Multifamily Housing Revenue Bonds (GNMA Collateralized Mortgage Loan – Bottineau Lofts Project), Series 2002 (the "Bonds"), and approximately $650,000 in the form of a Multifamily Housing Revenue Note (Bottineau Lofts Project), Subordinate Series 2002 (the "Note"), to be issued by the City, and the revenues from the Project (as defined below) shall be pledged for the security and payment of the Bonds (except as may otherwise be set forth in the Indenture hereinafter referred to); and

WHEREAS, the Bond proceeds will be used by the City to fund a loan (the "Loan") to the Developer to finance the acquisition and construction of the Project; and

WHEREAS, the Bonds will be issued under an Indenture of Trust, dated as of September 1, 2002 (the "Indenture"), and the proceeds of the Bonds will be loaned to the Developer pursuant to a Financing Agreement, dated as of September 1, 2002 (the "Financing Agreement"), and the Bonds will be secured by a pledge of all rights and revenues derived by the City from the Financing Agreement (except certain retained rights of the City), and said Bonds and the interest on said Bonds shall be payable solely from the revenues pledged therefor and the Bonds shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation nor give rise to a pecuniary liability of the City or a charge against its general credit or assets and shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City other than the City's interest in the Project; and

WHEREAS, the Note will be issued, and the proceeds of the Note will be loaned to the Developer pursuant to a Note Agreement, dated as of September 1, 2002 (the "Note Agreement"), between the City and the Developer, and the Note, pursuant to an Assignment of Note Agreement, dated as of September 1, 2002 (the "Assignment of Note Agreement"), between the Developer, the City and the lender named in the Note Agreement (the Lender"), will be secured by a pledge of all rights derived by the Developer from the Note Agreement to the Lender, and said Note and the interest on said Note shall be payable solely from the revenues pledged therefor and the Note shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation nor give rise to a pecuniary liability of the City or a charge against its general credit or assets and shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City other than the City's interest in the Project; and

WHEREAS, forms of the following documents (including the exhibits referred to therein) have been submitted to the City:

a. The Indenture to be made and entered into between the City and the trustee named therein (the "Trustee"), providing for the issuance of the Bonds, prescribing the form thereof, pledging the trust estate described therein for the security of the Bonds, and setting forth proposed recitals, covenants and agreements with respect thereto;

b. The Financing Agreement to be made and entered into between the City, the Developer, the Trustee and the Lender, providing for the loan of the proceeds of the Bonds to the Developer, and for the repayment of such loan;

c. The Tax Regulatory Agreement, dated as of September 1, 2002 between the City, the Trustee and the Developer (the "Tax Regulatory Agreement");

d. The Regulatory Agreement, dated as of September 1, 2002 between the City, the Trustee and the Developer (the "Regulatory Agreement");

e. The Note;

f. The Note Agreement;

g. The Assignment of Note Agreement;

h. The Bond Purchase Agreement between U.S. Bancorp Piper Jaffray, Inc. (the "Underwriter"), the City and the Developer (the "Bond Purchase Agreement"); and

i. The Preliminary Official Statement.

The agreements described and referred to in paragraphs a through h above shall hereinafter sometimes be referred to collectively as the "Agreements";

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF MINNEAPOLIS:

That it is hereby found, determined and declared that:

a. The preservation of the quality of life in the City is dependent upon the maintenance, provision and preservation of an adequate housing stock which is affordable to persons and families of low or moderate income, that accomplishing this is a public purpose, and that many would-be providers of housing units in the City are either unable to afford mortgage credit at present market rates of interest or are unable to obtain mortgage credit because the mortgage credit market is severely restricted.

b. The development and implementation of the Program, and the issuance and sale of the Bonds by the City, and the execution and delivery of the Agreements and the performance of all covenants and agreements of the City contained therein and of all other acts and things required under the Constitution and Laws of the State of Minnesota to make the Agreements and the Bonds valid and binding obligations of the City in accordance with their terms, are authorized by the Act.

c. The implementation of the Program for the purposes and in the manner contemplated by the Agreements conforms or will conform to all pertinent statutes, regulations and ordinances of the State of Minnesota and the City.

d. It is desirable that the Bonds and the Note be issued by the City, in an aggregate principal amount not to exceed $3,640,000, on the terms set forth in the Indenture, the Bond Purchase Agreement and the Note Agreement.

e. The payments required or provided for by the Agreements are intended to produce income and revenues sufficient to provide for the payment when due of principal of and interest on all Bonds issued under the Indenture, and payments are required to be made for such expenses of, among other things, administration of the Program as will be necessary to protect the interests of the City and the Trustee.

f. Pursuant to the provisions of the Act, and as provided in the Agreements, the Bonds and the Note shall be retired solely from the revenues of the Project.

BE IT FURTHER RESOLVED, that the Agreements in substantially the forms submitted to the City at this meeting are hereby approved. Such of the documents as require the execution of the City are hereby authorized and directed to be executed or accepted, as the case may be, and delivered in the name and on behalf of the City by its Mayor, City Clerk and Finance Officer upon execution thereof by the parties thereto as appropriate. The Bonds, the Note and the Agreements shall be executed and delivered as provided therein. Copies of all the documents necessary for the consummation of the transactions described herein and in the Agreements shall be delivered, filed and recorded as provided herein and in the Agreements.

BE IT FURTHER RESOLVED, that the form and terms of the Agreements may be varied prior to execution and delivery by the parties thereto, provided that any such variance shall not be, in the opinion of the City's legal counsel and the Mayor, materially adverse to the interests of the City. The execution and delivery of the Agreements as provided above shall be conclusive evidence of the determination that any such variance was not materially adverse to the interests of the City.

BE IT FURTHER RESOLVED, that in anticipation of the collection of revenues of the Project, there shall be issued forthwith the Bonds, which issuance is approved, substantially in the forms and upon the terms set forth in the Indenture, the terms of which are for this purpose incorporated in this resolution and made a part hereof as if fully set forth herein. The Bonds shall be dated as of the date and shall mature on the dates (subject to redemption on such earlier dates as provided in the Indenture), bear interest and be payable at the rates, all determined as set forth in the Indenture, provided that such rates shall result in an average coupon rate not greater than 6.25% per annum.

BE IT FURTHER RESOLVED, that in anticipation of the collection of revenues of the Project, there shall be issued forthwith the Note, which issuance is approved, substantially in the forms and upon the terms set forth in the Note Agreement and the Assignment of Note Agreement, the terms of which are for this purpose incorporated in this resolution and made a part hereof as if fully set forth herein. The Note shall be dated as of the date and shall mature on the date, bear interest and be payable at the rate, all determined as set forth in the Note Agreement and the Assignment of Note Agreement, provided that such rates shall result in an average coupon rate not greater than 7.0% per annum if the Note bears interest at a fixed rate or an initial average coupon rate not greater than 6.0% per annum if the Note bears interest at a variable rate.

BE IT FURTHER RESOLVED, that all actions of the members, employees and staff of the City heretofore taken in furtherance of the Program are hereby approved, ratified and confirmed.

BE IT FURTHER RESOLVED, that the sale of said Bonds to the Underwriter is hereby approved, and the Bonds are hereby directed to be sold to the Underwriter, upon the terms and conditions set forth in the Bond Purchase Agreement. The Mayor, City Clerk and Finance Officer of the City are hereby authorized and directed to prepare and execute by manual or facsimile signature the Bonds as described in the Indenture and to deliver them to the Trustee (which is herein designated as the authenticating agent under Minnesota Statutes, Section 475.55) for authentication and delivery to the Underwriter, together with a certified copy of this resolution, and the other documents required by the Indenture.

BE IT FURTHER RESOLVED, that the sale of said Note to the Lender is hereby approved, and the Note is hereby directed to be sold to the Lender, upon the terms and conditions set forth in the Note Agreement and the Assignment of Note Agreement. The Mayor, City Clerk and Finance Officer of the City are hereby authorized and directed to prepare and execute by manual or facsimile signature the Note as described in the Note Agreement and the Assignment of Note Agreement, and to deliver it to the Trustee (which is herein designated as the authenticating agent under Minnesota Statutes, Section 475.55) for authentication and delivery to the Lender, together with a certified copy of this resolution, and the other documents required by the Note Agreement and the Assignment of Note Agreement.

BE IT FURTHER RESOLVED, that the Mayor, City Clerk, Finance Officer and other officers of the City are authorized and directed to prepare and furnish when the Bonds and the Note are issued, certified copies of all proceedings and records of the City relating to the Bonds and the Note and such other affidavits and certificates (including but not limited to those required by bond counsel) as may be required to show the facts relating to the legality, tax exemption and marketability of the Bonds and the Note as such facts appear from the books and records in said officers' custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the City as to the truth of all statements made by the City and contained therein. The Mayor, City Clerk, Finance Officer and said officers are further authorized to execute such additional documents as shall be determined by the Mayor to be necessary and desirable to provide for the issuance of the Bonds and the Note.

BE IT FURTHER RESOLVED, that the Mayor, City Clerk, Finance Officer and other officers of the Issuer consent to the distribution of the Preliminary Official Statement relating to the Bonds, substantially in the form on file with the Issuer. The Mayor, City Clerk, Finance Officer and said officers further consent to the use by the Underwriter in connection with the sale of the Bonds of a final Official Statement, substantially in the form of the Preliminary Official Statement described above. The Preliminary Official Statement and the Official Statement are the sole materials consented to by the Mayor, City Clerk, Finance Officer and said officers for use in connection with the offer and sale of the Bonds. The Mayor, City Clerk, Finance Officer and said officers have not participated in the preparation thereof, have not made any independent investigation of the information contained therein and shall have no liability in connection with the contents of or use of such offering materials.

BE IT FURTHER RESOLVED, that all covenants, stipulations, obligations and agreements of the City contained in this resolution and the aforementioned documents shall be deemed to be the covenants, stipulations, obligations and agreements of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the City. Except as otherwise provided in this resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the City by the provisions of this resolution or of the aforementioned documents shall be exercised or performed by the City or by such members of the City, or such officers, board, body or agency thereof as may be required or authorized by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member of the City, or any officer, agent or employee of the City in that person's individual capacity, and neither the City Council nor any officer or employee executing the Bonds or the Note shall be liable personally on the Bonds or the Note or be subject to any personal liability or accountability by reason of the issuance thereof.

No provision, covenant or agreement contained in the aforementioned documents, the Bonds, the Note or in any other document related to the Bonds or the Note, and no obligation therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to any pecuniary liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Project, the proceeds of the Bonds which are to be applied to the payment of the Bonds, as provided therein and in the Indenture, or the proceeds of the Note which are to be applied to the payment of the Note, as provided therein and in the Note Agreement. Neither the Bonds nor the Note shall constitute a charge, lien or encumbrance, legal or equitable, upon any property or funds of the City except the revenue and proceeds pledged to the payment thereof, nor shall the City be subject to any liability thereon. The holders of the Bonds and the Note shall never have the right to compel any exercise of the taxing power of the City to pay the outstanding principal of the Bonds or the Note, or the interest thereon, or to enforce payment thereof against any property of the City. The Bonds and the Note shall recite in substance that the Bonds and the Note, including the interest thereon, are payable solely from the revenues and proceeds pledged to the payment thereof. Neither the Bonds nor the Note shall constitute a debt of the City within the meaning of any constitutional or statutory limitation.

BE IT FURTHER RESOLVED, that except as herein otherwise expressly provided, nothing in this resolution or in the aforementioned documents expressed or implied is intended or shall be construed to confer upon any person or firm or corporation, other than the City or any holder of the Bonds and the Note issued under the provisions of this resolution, any right, remedy or claim, legal or equitable, under and by reason of this resolution or any provision hereof, this resolution, the aforementioned documents and all of their provisions being intended to be and being for the sole and exclusive benefit of the City and any holder from time to time of the Bonds issued under the provisions of this resolution.

BE IT FURTHER RESOLVED, that in case any one or more provisions of this resolution, or of the aforementioned documents, or of the Bonds or the Note issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Bonds or the Note, but this resolution, the aforementioned documents, the Bonds and the Note shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

BE IT FURTHER RESOLVED, that the Bonds and the Note, when executed and delivered, shall contain a recital that they are issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Bonds and the Note and the regularity of the issuance thereof, and that all acts, conditions and things required by the laws of the State of Minnesota relating to the adoption of this resolution, to the issuance of the Bonds and the Note and to the execution of the aforementioned documents to happen, exist and be performed precedent to and in the enactment of this resolution, and precedent to issuance of the Bonds and the Note, and precedent to the execution of the aforementioned documents have happened, exist and have been performed as so required by law.

BE IT FURTHER RESOLVED, that in the event any of the officers of the City authorized to execute documents on behalf of the City under this resolution have resigned or shall for any reason be unable to do so, any member of the City, or officer of the City, is hereby directed and authorized to do so on behalf of the City, with the same effect as if executed by the officer authorized to do so in this resolution.

BE IT FURTHER RESOLVED, that the City hereby allocates up to $3,640,000 of its entitlement authority to issue tax-exempt bonds pursuant to Minnesota Statutes, Chapter 474A, to the Bonds and the Note, the actual amount of such allocation to be in the aggregate principal amount of Bonds and Note issued.

BE IT FURTHER RESOLVED, that this Resolution shall take effect upon publication.

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